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DISTRICT II

February 2, 2022

To:

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Circuit Court Judge
Electronic Notice

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Fond du Lac County
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You are hereby notified that the Court has entered the following opinion and order:

2020AP1918-CR State of Wisconsin v. Mohamed G. Elmhdati (L.C. #2019CF163)

Before Gundrum, P.J., Neubauer and Grogan, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Mohamed G. Elmhdati appeals from a judgment of conviction. Prior to the preliminary hearing, he moved to dismiss the charges of first-degree reckless injury and aggravated battery, contending the complaint contained insufficient facts related to these charges. On appeal, he claims the circuit court erred in denying this motion. He further insists on appeal that the court erred in denying his motion to dismiss those same charges at the close of evidence and relatedly claims the evidence at trial was insufficient to convict him of those charges. Based upon our

review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).[1] We affirm.

The Complaint

As relevant to this appeal, the criminal complaint indicates that during a confrontation over a backpack Elmhdati believed contained items belonging to him, Elmhdati shot the victim "in the upper inside thigh on his left leg" with "the exit wound … on the back of his leg." At the scene, officers observed "blood coming from [the victim's] leg and … dripping down to his shoe." One officer provided medical aid to the victim, including putting on a tourniquet. EMTs arrived, provided additional medical aid to the victim, and took him to the emergency room by ambulance. At the hospital, "[s]everal doctors, nurses, technicians were standing by" to treat the victim. Scans were taken and the wound was treated. Medical staff determined that the bullet "had missed any major artery and bone," and a doctor opined that the victim would make a "quick recovery." The complaint charged Elmhdati with seven criminal counts, including, as relevant to this appeal, first-degree reckless injury and aggravated battery.

Elmhdati moved to dismiss the charges of first-degree reckless injury and aggravated battery on the basis that "[t]he facts alleged in the complaint are not themselves sufficient, nor do they give rise to reasonable inferences that are sufficient to establish that Mr. Elmhdati committed or intended to cause … great bodily harm," a necessary element for a conviction on each of those charges. *See* WIS. STAT. §§ 940.23(1)(a), 940.19(5). Following a hearing, the circuit court denied the motion, concluding that the complaint contained sufficient facts because

[1] All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

"the described bullet through the leg, certainly without treatment and loss of blood, could result in risk of death as well as qualifies as serious bodily injury. While the doctor at the hospital made his statements, that was after medical treatment." On appeal, Elmhdati renews his argument, but we agree with the circuit court.

"The criminal complaint … must set forth facts that are sufficient, in themselves or together with reasonable inferences to which they give rise, to allow a reasonable person to conclude that a crime was probably committed and that the defendant is probably culpable." ***State v. Hurley***, 2015 WI 35, ¶26, 361 Wis. 2d 529, 861 N.W.2d 174 (citations omitted).

> To be sufficient, a complaint must only be minimally adequate. This is to be evaluated in a common sense rather than a hypertechnical manner, in setting forth the essential facts establishing probable cause. A complaint is sufficient under this standard if it answers the following five questions: "(1) Who is charged?; (2) What is the person charged with?; (3) When and where did the alleged offense take place?; (4) Why is this particular person being charged?; and (5) Who says so? or How reliable is the informant?"

State v. Adams, 152 Wis. 2d 68, 73-74, 447 N.W.2d 90 (Ct. App. 1989) (citations omitted). The sufficiency of a complaint is an issue of law we review de novo. ***Id.*** at 74.

In this case, the only issue relates to the fourth question related to the sufficiency of a complaint, otherwise stated, "whether the complaint adequately establishes the reason" Elmhdati was charged with first-degree reckless injury and aggravated battery. *See* ***id.*** "Specifically, the question is whether the facts in the complaint support a finding that" Elmhdati committed these two crimes. *See* ***id.***

As noted, "great bodily harm" is an essential element of both first-degree reckless injury and aggravated battery. It is defined as bodily injury "which creates a substantial risk of death,

or which causes serious permanent disfigurement, or *which causes* a permanent or protracted loss of impairment of the function of any bodily member or organ *or other serious bodily injury*." *See* WIS. STAT. § 939.22(14) (emphasis added). The complaint here states that Elmhdati shot the victim "in the upper inside thigh on his left leg" and the bullet exited the back of his leg. An officer at the scene provided the victim medical aid, including putting a tourniquet on him, and EMTs provided the victim additional medical aid and took him by ambulance to the emergency room where medical professionals took scans and treated the wound. Even though the complaint also indicates that medical staff determined that the bullet "had missed any major artery and bone" and one doctor opined that the victim would make a "quick recovery," we conclude that the complaint "meets the 'minimally adequate' test for the sufficiency of a complaint as it would allow a reasonable person to conclude that" in shooting the victim in the "upper inside thigh," prompting an officer to apply a tourniquet to stem the loss of blood and requiring that the victim be taken by ambulance to the emergency room, Elmhdati inflicted "other serious bodily injury" on the victim and thus "great bodily harm." *See* ***Adams***, 152 Wis. 2d at 76; WIS. STAT. § 939.22(14).

The Trial

Following the circuit court's denial of Elmhdati's motion to dismiss, a jury trial was held. As related to the issue on appeal, evidence was presented that after Elmhdati shot the victim in the upper left thigh, "just [below] the groin," the victim was "in a state of shock" and was "screaming," "moaning" and "crying" in "extreme pain." One officer who arrived on the scene observed the victim "hopping around on one leg," so the officer had the victim lie down out of concern that if he continued hopping on one leg, he "would … continue to lose blood and possibly die." The officer applied a tourniquet above the wound because the victim was

"bleeding heavily." The victim was also treated on the scene by EMTs and transported to the emergency room by ambulance. The victim's leg continued bleeding even at the hospital, so medical personnel there "appl[ied] a compress bandage to it to get the rest of the bleeding to stop." The jury saw pictures of the wound, including its location on the victim's leg, and the amount of blood that had soaked into the victim's jeans. At the close of evidence, Elmhdati moved to dismiss the first-degree reckless injury and aggravated battery charges on the basis that the evidence was insufficient for the jury to find that he caused the victim great bodily harm. The court denied the motion. The jury subsequently found Elmhdati guilty of both charges.

As Elmhdati points out in his brief-in-chief, the "[t]he test for the sufficiency of the evidence on a motion to dismiss [in the trial court] is whether 'considering the [S]tate's evidence in the most favorable light, the evidence adduced, believed and rationally considered, is sufficient to prove the defendant's guilt beyond a reasonable doubt.'" *See* ***State v. Henning***, 2013 WI App 15, ¶19, 346 Wis. 2d 246, 828 N.W.2d 235 (third alteration in original) (quoting ***State v. Duda***, 60 Wis. 2d 431, 439, 210 N.W.2d 763 (1973)). "Accordingly, we will not reverse the circuit court's denial of [a] motion to dismiss as long as the jury reasonably could have found [the defendant] guilty beyond a reasonable doubt." ***Henning***, 346 Wis. 2d 246, ¶19. Similarly,

> in determining whether the evidence was sufficient to support [a jury's finding of guilt on a charge,] "an appellate court may not substitute its judgment for that of the trier of fact unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt."

State v. Rowan, 2012 WI 60, ¶20, 341 Wis. 2d 281, 814 N.W.2d 854 (citation omitted). We are to "give great deference to the determination of the trier of fact," and "must examine the record to find facts that support upholding the jury's decision to convict." ***Id.*** (citation omitted).

In ***La Barge v. State***, 74 Wis. 2d 327, 246 N.W.2d 794 (1976), our supreme court considered whether evidence presented at trial was sufficient to allow a reasonable jury to determine that the defendant in that case inflicted "other serious bodily injury" upon the victim. The evidence showed that the victim sustained numerous stab wounds, twelve of which required suturing, and that "approximately 100 inches of suture material was required to close the wounds." ***Id.*** at 335. The evidence also showed that the victim "sustained a number of minor cuts, abrasions, and bruises which did not require suturing," she had lost a "considerable" amount of blood and ultimately spent six days in the hospital, but "at no time was there a probability of death, and the course of events showed that no internal organs were penetrated." ***Id.***

The ***La Barge*** court stated that "[t]he words serious bodily injury are words of ordinary significance, and … they are well understood by any jury of ordinary intelligence." ***Id.*** (citation omitted). Even though there was no "probability of death" and "no internal organs" had been penetrated, the court concluded that "the jury could reasonably conclude that the multiple cuts and stab wounds of [the victim] constituted 'serious bodily injury.' The evidence was sufficient beyond a reasonable doubt to sustain the verdict finding the defendant guilty." ***Id.***

In this case, the evidence indicated that the wound Elmhdati inflicted on the victim when he shot him in the upper leg was anything but a minor "flesh wound."[2] When officers arrived on the scene, the bleeding from the victim's "upper inside thigh," "just below the groin," had not

[2] *See* MONTY PYTHON AND THE HOLY GRAIL (Python (Monty) Pictures Ltd. et al. 1975), https://www.youtube.com/watch?v=UijhbHvxWrA (last visited Jan. 10, 2021) (battle with the black knight).

stopped. The victim continued "bleeding heavily," prompting an officer to place a tourniquet on it to stem the loss of blood. The same officer testified that the wound was such that he was concerned that if the victim did not lie down, he "would … continue to lose blood and possibly die." The victim was "in a state of shock" and was "screaming," "moaning," and "crying in "extreme pain." When EMTs arrived, they obviously believed that the tourniquet application was insufficient to address the victim's medical needs and that the nature of the wound required that the victim be taken by ambulance to the emergency room. The wound continued to bleed at the hospital and medical personnel had to apply a compress bandage to finally stop the bleeding.

We conclude that a jury could have reasonably viewed the seriousness of the gunshot wound to the victim's upper leg similarly to the officer who applied the tourniquet—that the victim was in danger of bleeding out and dying from the wound. It does not matter that the officer, EMTs, and other medical personnel eventually were successful in preventing that from occurring. The evidence was such that a jury reasonably could have found beyond a reasonable doubt that when Elmhdati shot the victim in the upper thigh, he in fact inflicted great bodily harm on the victim. Thus, the jury reasonably could have found Elmhdati guilty of first-degree reckless injury and aggravated battery, which addresses both the circuit court's denial of the motion to dismiss at the close of evidence and the question as to the sufficiency of evidence to uphold the jury's verdict.

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals